Proposed Transfer Pricing Provisions

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XX. Rationalisation of transfer pricing provisions for carrying out multi-year arm's length price determination

Transfer pricing provisions enable computation of income arising from an international transaction or a specified domestic transaction with regard to an arm's length price. These provisions are contained in sections 92 to 92F.

2. Section 92CA provides the procedure governing reference of an international transaction or a specified domestic transaction to the Transfer Pricing Officer (TPO), for computation of their arm's length price (ALP). Section 92C provides for computation of arm's length price in relation to an international transaction or a specified domestic transaction.

3. The determination of ALP in transfer pricing provisions *inter alia* proceeds in the following manner –

- The Assessing Officer (AO) may, refer the computation of the ALP with the previous approval of the Principal Commissioner or Commissioner, in relation to an international transaction or a specified domestic transaction entered in any previous year, to the TPO;
- The TPO determine the ALP in relation to the said transaction in accordance with sub-section (3) of section 92C and sends a copy of his order to the AO and to the assessee;
- the AO shall proceed to compute the total income of the assessee for such previous year under sub-section (4) of section 92C in conformity with the ALP as so determined by the TPO.

4. It has been noted that in reference under section 92CA for computation of arm's length price, in many cases, there are similar international transactions or specified transactions for various years, same facts like enterprises with whom such transaction is done, proportionate quantum of transaction, location of associated enterprises etc., and same arm's length analysis are repeated every year, creating compliance burden on the assessee as well as administrative burden on the TPOs. In view of the same, in such situations, it is proposed to carry out TP assessments in a block.

5. It is, therefore, proposed to provide that the ALP determined in relation to an international transaction or a specified domestic transaction for any previous year shall apply to the similar transaction for the two consecutive previous years immediately following such previous year. For the same, it is proposed to make the following amendments:–

5.1 Reference to TPO

(I) the assessee shall be required to exercise an option or options for the above effect in the form, manner and within such time period as may be prescribed [new sub-section (3B) in section 92CA;]

(II) the TPO may by an order within one month from the end of the month in which such option is exercised, declare that the option is valid subject to the prescribed conditions [new sub-section (3B) in section 92CA];

(III) if the TPO declares that the option exercised by the assessee is valid,–

- the ALP determined in relation to an international transaction or a specified domestic transaction for any previous year shall apply to the similar international transaction or the specified domestic transaction for the two consecutive previous years immediately following such previous year [new sub-section (3B) in section 92CA];

- the TPO shall examine and determine the ALP in relation to such similar transaction for such consecutive previous years, in the order referred to in sub-section (3) of section 92CA [new subsection (4A) in section 92CA];

- on receipt of such order from the TPO, the AO shall recompute the total income of the assessee for such consecutive previous years as per the provisions of sub-section (21) of section 155 [new sub-section (4A) in section 92CA];

- no reference for computation of ALP in relation to such transaction shall be made [new first proviso to sub-section (1) of section 92CA];

 if any reference is made in such scenarios, before or after the above declaration by the TPO, the provisions of sub-section (1) of section 92CA shall have the effect as if no reference is made for such transaction [new second proviso to sub-section (1) of section 92CA];

(IV) the provisions of exercising option mentioned above and consequent proceedings, shall not apply to any proceedings under Chapter XIV-B i.e. search proceedings [proviso to new sub-section (3B) in section 92CA];

(V) If any difficulty arises in giving effect to the provisions of sub-section (3B) and sub-section (4A) of section 92CA, the Board may, with the previous approval of the Central Government, issue guidelines for the purpose of removing the difficulty and every guideline issued by the Board shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and the assessee [new sub-section (11) in section 92CA].

5.2 Re computation of income under section 155

A new sub-section (21) shall be inserted in section 155, so that where the ALP determined for an international transaction or a specified domestic transaction for any previous year and the TPO has declared an option exercised by the assessee as valid option in respect of such transaction for two consecutive previous years immediately following such previous year, then:-

(I) the AO shall recompute the total income of the assessee for such consecutive previous years, by amending the order of assessment or any intimation or deemed intimation under sub-section (1) of section 143,–

- in conformity with the ALP so determined by the TPO under sub-section (4A) of section 92CA in respect of such transaction;

- taking into account the directions issued under sub-section (5) of section 144C, if any, for such previous year;

(II) such re computation shall be done within three months from the end of the month in which the assessment is completed in the case of the assessee for such previous year;

(III) the first and second proviso to sub-section (4) of section 92C shall apply to such re-computation;

(IV) such re computation shall be made within three months from the end of the month in which order of assessment or any intimation or deemed intimation is made, in case that is not made before the period of three months as mentioned above.

6. These amendments will take effect from the 1st day of April, 2026 and shall accordingly, apply in relation to the assessment year 2026-27 and subsequent assessment years.

FAQ BUDGET 2025 – (6) Rationalization of transfer pricing provisions for carrying out multi-year arm's length price determination

Q.1. What are transfer pricing provisions?

Ans. Transfer pricing provisions enable computation of income arising from an international transaction or a specified domestic transaction with regard to an Arm's Length Price (ALP).

Q.2. How is income computed while reference is made for determination of arm's length price?

Ans. The determination of ALP in transfer pricing provisions inter alia proceeds in the following manner –

- the Assessing Officer (AO) may, refer the computation of the ALP in relation to an international transaction or a specified domestic transaction entered in any previous year, to the Transfer Pricing Officer (TPO);
- the TPO determines the ALP in relation to the said transaction in accordance with subsection (3) of section 92C and sends a copy of his order to the AO and to the assessee;
- the AO proceeds to compute the total income of the assessee for such previous year under sub-section (4) of section 92C in conformity with the ALP as so determined by the TPO.
- This examination is done during a reference made every year and is repetitive.

Q.3. What change is provided under the current Finance Bill to the assessee for the determination of Arm's Length Price?

Ans. The assessee will <u>have option to get the ALP</u>, determined in relation to an international transaction or a specified domestic transaction for any previous year, <u>applied to a similar transaction for the two consecutive previous years immediately following such previous year. In effect, the ALP determined in addition to such transaction for a year can be valid for similar transactions for the next 2 years. This shall reduce multiple proceedings for determining ALP for similar transactions.</u>

Q4. How will the taxpayer exercise this option?

Ans. The taxpayer shall submit the option in a prescribed Form and the manner of filing this Form shall also be provided in the Rules.

Q5. When can this option be exercised? Can more than one option be exercised for one assessment year?

Ans. The assessee shall give this option to the TPO during the course of TP proceeding for determination of ALP. The exact timeline will be prescribed in the Rules. For transactions of different assessment years, option may be exercised separately. Thus, multiple options can be exercised for one assessment year.

Q.6. How shall the option be dealt by the TPO upon exercise of the option as introduced in the current Finance Bill?

Ans. The TPO may by an order within one month from the end of the month in which such option is exercised, declare that the option is valid subject to the prescribed conditions. For determining validity, he will examine whether the transactions of the subsequent years are similar transactions or not.

Q.7. Can AO make a reference again for a transaction for which a valid option has been exercised by the assessee?

Ans. A reference will not be made again for the transaction for which valid option is exercised. Even if any reference is made in respect of such transaction, it shall have the effect as if no reference is made for such transaction provided the TPO has passed order determining the option as valid in respect of such transactions.

Q.8. Do the provisions of exercising option mentioned above and consequent proceedings, apply to search cases?

Ans. No.

Q.9. How will the income will be recomputed once the TPO has examined and determined the ALP in relation to such similar transaction for such consecutive previous years, in the order?

Ans. The AO shall re compute the total income of the assessee for such consecutive previous years as per the provisions of sub-section (21) of section 155.

Q.10. How will the AO recompute the total income of the 2 consecutive previous years under the provisions of section 155(21) of the Income Act, 1961?

Ans. The AO shall recompute the total income of the assessee for such consecutive previous years, by amending the order of assessment or any intimation:-

i. in conformity with the ALP so determined by the TPO under sub-section (4A) of section 92CA in respect of such transaction (being a similar transaction);

ii. considering the directions issued under sub-section (5) of section 144C, if any on the referred transaction.

Reference to dispute resolution panel.

144C (5) reads as follows (5) The Dispute Resolution Panel shall, in a case where any objection is received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

Proposed Amendment in Section 92CA

(a) with effect from the 1st April, 2026,—

(i) in sub-section (1), the following provisos shall be inserted, namely:—

"Provided that no reference for computation of the arm's length price in relation to an international transaction or a specified domestic transaction shall be made, if the Transfer Pricing Officer has declared that option exercised by the assessee in sub-section (3B) in relation to such transaction is valid for such previous year:

Provided further that if any reference for an international transaction or a specified domestic transaction, in respect of a previous year, for which the option is declared valid under sub-section (3B) is made before or after such declaration by the Transfer Pricing Officer, the provisions of this sub-section shall have the effect as if no reference is made for such transaction.";

(ii) after sub-section (3A), the following sub-section shall be inserted, namely:—

"(3B) The arm's length price, being determined in relation to the international transaction or the specified domestic transaction under sub-section (3) for any previous year shall apply to similar international transaction or specified domestic transaction for the two consecutive previous years immediately following such previous year, on fulfilment of the following conditions, namely:—

(a) the assesee exercises an option or options to the above effect for the said two consecutive previous years;

(b) such option or options are exercised in such form, manner and within such period as prescribed; and,

(c) the Transfer Pricing Officer shall, within one month from the end of the month in which such option or options are exercised, by an order in writing, declare that such option or options are valid subject to the conditions, as prescribed: Provided that the provisions of this subsection shall not apply to any proceedings under Chapter XIV-B.";

(iii) after sub-section (4), the following sub-section shall be inserted, namely:—

"(4A) Notwithstanding anything contained in sub-section (4), where the Transfer Pricing Officer has declared an option exercised by the assessee as valid option under sub-section (3B), he shall examine and determine the arm's length price in relation to such similar transaction for two consecutive previous years immediately following such previous year, in the order referred to in sub-section (3) and on receipt of such order, the Assessing Officer shall proceed to recompute the total income of the assessee for the said two consecutive previous years as per the provisions of sub-section (21) of section 155.";

(b) in sub-section (9), the proviso shall be omitted;

<u>Sub-section (9) and the omitted proviso thereof reads as follows:</u>

"9) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (8), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, *2025*."

(c) after sub-section (10), the following sub-sections shall be inserted with effect from the 1st April, 2026, namely:—

"(11) If any difficulty arises in giving effect to the provisions of sub-sections (3B) and (4A), the Board may, with the previous approval of the Central Government, issue guidelines for the purpose of removing such difficulty: Provided that no such guideline shall be made after the expiration of two years from the 1st April, 2026.

(12) Every guideline issued by the Board under sub-section (11) shall be laid before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive session aforesaid, both houses agree in making any modification in such guideline or both Houses agree that the guideline, should not be issued, the guideline shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that guideline.".

In section 155 of the Income-tax Act, after sub-section (20), the following sub-section shall be inserted with effect from the 1st April, 2026, namely:—

“(21) Where the arm's length price is determined in relation to an international transaction or a specified domestic transaction under sub-section (3) of section 92CA for any previous year and the Transfer Pricing Officer has declared that an option exercised by the assessee is valid under sub-section (3B) of the said section in respect of such transaction for two consecutive previous years immediately following such previous year, the Assessing Officer shall proceed to recompute the total income of the assessee for the said two consecutive previous years, by amending the order of assessment or any intimation or deemed intimation under sub-section (1) of section 143, as the case may be,—

(a) in conformity with the arm’s length price so determined by the Transfer Pricing Officer under subsection (4A) of the said section in respect of such transaction; and

(b) taking into account the directions issued under subsection (5) of section 144C, if any, for such previous year, within three months from the end of the month in which the assessment is completed in the case of the assessee for such previous year, and the first and second provisos to subsection (4) of section 92C shall apply thereto:

first and second provisos to subsection (4) of section 92C read as follows:

“Provided that no deduction under section 10A or section 10AA or section 10B or under Chapter VI-A shall be allowed in respect of the amount of income by which the total income of the assessee is enhanced after computation of income under this sub-section :”

“Provided further that where the total income of an associated enterprise is computed under this sub-section on determination of the arm's length price paid to another associated enterprise from which tax has been deducted or was deductible under the provisions of Chapter XVII-B, the income of the other associated enterprise shall not be recomputed by reason of such determination of arm's length price in the case of the first mentioned enterprise.”

Provided that where the order of assessment or any intimation or deemed intimation under sub-section (1) of section 143, for the said two consecutive previous years is not made within the said three months, such re-computation shall be made within three months from the end of the month in which such order of assessment or any intimation or deemed intimation under sub-section (1) of section 143, as the case may be, is made.”.

THANK YOU